

REMARKS

Claims 1-24 are pending in this Application. Claims 1-7 and 16-24 have previously been withdrawn from consideration. Applicants submit herewith amendments canceling claims 8-12. Claim 13 has been amended to incorporate all limitations of cancelled claim 8 from which it depends.

Rejection of Claims Under 35 U.S.C. §101

The Examiner has rejected claims 8-9, 11 and 13-14 as being directed to non-statutory subject matter, stating, that the claims read on naturally occurring cells containing the *lux* gene complex that have undergone normal mutation.

Pending entry of Applicants' claim amendments, reconsideration of the rejection is respectfully requested. Claims 8-9 and 11 are being cancelled. Claim 13 is being amended to further clarify that the cells are genetically modified cells or the progeny thereof. The amendment to claim 13 is well supported by the specification, for example, on page 15, line 30 to page 16, line 2 and page 23, lines 1-3. Hence, the Examiner will appreciate that the proposed amendment does not add any new matter.

Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §101.

Rejection of Claims Under 35 U.S.C. §112, First Paragraph

The Examiner has rejected claims 8-15 as failing to comply with the written description requirement. The Examiner contends that the embodiments disclosed in the specification do not support claims to cells having a point mutation which is in any gene.

Applicants request reconsideration of the rejection based upon the claim amendments presented herewith. Applicants are canceling claims 8-12. The remaining claims, 13-15, are directed to mutations in a specific gene, β -lactamase. Applicants submit that the embodiments disclosed in the specification provide support for claims 13-15 so as to comply with the written description requirement.

Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §112, First Paragraph.

Rejection of Claims Under 35 U.S.C. § 112, Second Paragraph

The Examiner has rejected claims 8-15 as being incomplete for omitting essential elements, specifically that the cell is under the control of a constitutive promoter.

Claims 8-12 have been cancelled. Claim 13 has been amended to further clarify that the *lux* gene complex is under the control of a constitutive promoter. The amendment to claim 13 is supported by the specification, for example, on page 4, line 2, page 5, lines 5-6, and page 10, line 7. Hence, as the Examiner will appreciate, the proposed amendment adds no new matter.

Based upon the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §112, second paragraph.

Rejection of Claims Under 35 U.S.C. §102 and §103

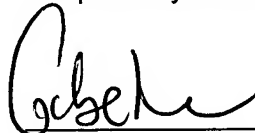
The Examiner has rejected claims 8-10 and 12 under §102(b) and claims 8-12 under §103. The Examiner notes that claims 13-15 are free of prior art. Pending claims 8-12 are being cancelled. Applicants respectfully request reconsideration and withdrawal of the rejection.

Pending entry of the proposed amendments, it is believed that the application is in condition for allowance. Such prompt and favorable action is requested.

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